

1 December 1959

SECNAV INSTRUCTION 5710.8A

From: Secretary of the Navy
To: Distribution list

Subj: International interchange of patent rights and technical information

1. Purpose. This instruction implements Department of Defense Directive 2000.3 dated 11 March 1959 (NOTAL) and the Technical Property Interchange Agreements between the United States and foreign governments which agreements are designed to facilitate the interchange of patent rights and technical information for defense purposes.

2. Cancellation. This instruction cancels and supersedes SECNAV Instruction 5710.8 of 10 November 1954.

3. Scope. This instruction applies to all Navy activities and personnel engaged in any interchange for defense purposes between the United States Government and foreign governments under the Mutual Security Act of 1954, as amended, involving technical information and associated patent and proprietary rights. The policies prescribed herein apply to unclassified as well as classified information owned by the United States Government or privately owned. This instruction does not apply to patents, patent applications and technical information in the field of atomic energy.

4. Background.

a. Pursuant to the provisions of the Mutual Security Act of 1954, as amended, and of predecessor legislation superseded by that Act, the United States has entered into agreements for the Interchange of Patent Rights and Technical Information to further the common defense of the United States and friendly nations. Agreements are now in effect with Australia, Belgium, France, the Federal Republic of Germany, Greece, Italy, Japan, The Netherlands, Norway, Turkey, and the United Kingdom. These agreements, among other things, are intended to facilitate the interchange of technical information by:

(1) Recognizing the rights of owners of such technical information disclosed by the United States to foreign governments;

(2) Assuring owners that foreign governments will treat such technical information as disclosed in confidence and that their rights will not be prejudiced;

(3) Recognizing the right of owners to receive compensation if damage to the owners results from an unauthorized disclosure or use of such information; and

(4) Providing that each government is entitled to use for defense purposes without cost any invention which the other government (including government corporations) owns or to which it has the right to grant a license to use, except to the extent that there may be liability to any private owner of an interest in the invention.

b. The Mutual Security Act of 1954, as amended, permits among other things the supply of "services" to eligible nations and international organizations. "Services" are defined in the Act as including any service, repair, training of personnel, or technical or other assistance or information necessary to effectuate the purposes of the Mutual Security Program. The Act also provides a legal remedy for owners of inventions or technical information for unauthorized use of inventions or damage resulting from disclosure of information by reason of acts of the United States or its officers or employees in connection with the furtherance of the purposes of the Act and authorizes settlement and compromise of claims prior to suit against the United States. The Act and the Technical Interchange agreements further provide that commercial relationships are to be used whenever appropriate and to the maximum extent feasible for the exchange of technical information known or believed to be privately owned in order to encourage the participation of private enterprise in the Mutual Security Program, to relieve the Department of Defense of administrative burdens and to reduce the costs to the United States of such interchanges unless the use of commercial relationships might impair the defense program or violate security requirements.

c. Technical information that is privately owned is considered for the purpose of this directive as information originated by or peculiarly within the knowledge of the owner thereof and those in privity with him, which is not available to the public and is subject to protection as property under recognized legal principles.

5. Policy. It is the policy of the Department of the Navy to encourage and facilitate the international interchange of patent rights and technical information to further the common defense of the United States and friendly nations. In carrying out this policy classified military information shall be released only through government channels and only when consistent with the National Disclosure Policy, or when approved as an exception to that Policy. Technical information which is known or believed to be privately owned shall normally be released through the medium of existing commercial relationships or commercial relationships to be established except that use of government channels is authorized for releases permitted under paragraphs 6 and 7 of this instruction.

6. Release Procedures.

a. Technical information which is wholly owned by the United States Government may be released to foreign governments when consistent with the National Disclosure Policy, or when approved as an exception to that policy.

b. Technical information which is known or believed to be privately-owned may be released to foreign governments if any one of the following conditions is met:

(1) The owner expressly consents to the proposed release;

(2) The United States, by contract or otherwise, has acquired or is entitled to acquire, the information under circumstances which permit the proposed release; or

(3) The Secretary of the Navy or his designee determines, under the authority of the Mutual Security Act of 1954, as amended, that

(a) The exigencies of the requirement for release to further the common defense do not allow sufficient time to obtain the consent of the owner; or

(b) The owner refuses consent and the best interests of the United States would be served by the release.

c. The release to foreign governments of technical information which is known or believed to be privately owned shall normally be in accord with the following two step procedure:

(1) Release for information only.

(2) Permission for manufacture, or use, for defense purposes.

d. All technical information, whether privately owned or government owned, released to foreign governments for any purpose shall be marked with the following restrictions:

(1) This information is accepted for defense purposes only;

(2) This information shall be accorded substantially the same degree of security protection as such information has in the United States.

(3) This information shall not be disclosed to another country without the consent of the United States.

e. When technical information which might be privately owned is released for information only, the restrictive marking shall also contain these additional provisions:

(1) This information is accepted upon the understanding that it might be privately owned.

(2) This information is accepted solely for the purpose of information and shall accordingly be treated as disclosed in confidence. The recipient government shall use its best endeavors to insure that the information is not dealt with in any manner likely to prejudice the rights of the private owner thereof to obtain patent or other like statutory protection therefor.

(3) The recipient government shall obtain the consent of the United States if it desires that this information be made available for manufacture, or use, for defense purposes.

f. When technical information which is known or believed to be privately owned is released by authority of this instruction the owner, if known, shall be furnished:

(1) Notice of the release;

(2) The identity of the recipient, if not contrary to security regulations;

(3) Notice that the recipient has been advised that the information might be privately owned; and

(4) Notice of the restrictions to which the release is subject.

7. Authorization for Release Without Consent of the Owner.

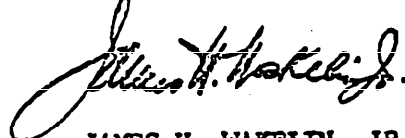
a. Military equipment including the information essential for its operation, maintenance and repair and technical information, known or claimed to be proprietary, which is being considered for release in accordance with 6.b.(3), may be released when the Chief of Naval Operations or his designee or a bureau chief or deputy bureau chief determines under the authority of the Act that such action clearly warrants the assumption of financial liability that may be incurred and there is no acceptable substitute equipment or information for which consent to release is obtainable or which is not proprietary.

b. Where any technical information is released in accordance with this paragraph, such release shall be subject to the conditions of release set forth in paragraph 6.d. above.

c. Military equipment, including the information essential for its operation, maintenance, and repair, known or claimed to be privately owned and for which consent for release cannot be obtained may be furnished to foreign governments in accord with 6.b.(3) without further legal authorization, provided such release is made pursuant to the grant aid provisions of the Mutual Security Act of 1954, as amended, and provided further, there is no acceptable substitute equipment or information for which consent for release is obtainable or which is not proprietary.

8. Problems and Reports. All patent problems and problems involving technical information known or alleged to be proprietary arising in connection with the release of technical information to foreign governments should be referred to appropriate Navy patent personnel. All releases of technical information to foreign governments where consent of the owner could not be obtained and all claims for compensation for the unauthorized use of inventions or unauthorized disclosure or use of technical information will be reported to the Chief of Naval Research for such action as may be appropriate.

9. Action. The Chief of Naval Operations, the Commandant of the Marine Corps, and the chiefs of bureaus and offices, Navy Department, are requested to review existing directives, instructions and regulations governing the release of technical information to foreign governments, and where necessary effect appropriate changes to insure that they conform with the policy and procedures stated in this instruction.



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